

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF NEW YORK**

JOSEPH HOPPE,

Petitioner,

v.

9:17-CV-0170
(GTS/CFH)

THOMAS GRIFFIN,

Respondent.

APPEARANCES:

OF COUNSEL:

JOSEPH HOPPE

10-B-0203

Petitioner pro se

Green Haven Corr. Facility

P.O. Box 4000

Stormville, New York 12582

**CHRISTIAN F. HUMMEL,
United States Magistrate Judge**

DECISION AND ORDER

Petitioner pro se Joseph Hoppe filed a motion to stay his pending petition for a writ of habeas corpus. Dkt. No. 5. He explains that he has "asked the New York State Court of Appeals to reconsider [his] leave to appeal application which was denied on January 17, 2017." Dkt. No. 5 at 1.¹ According to petitioner, the court erroneously ruled that the order petitioner attempted to appeal from was not appealable under New York Criminal Procedure Law ("CPL") §450.90(1). Id. He asks this Court to stay this action pending the outcome of his motion. Id. at 1-3.

When a district court is presented with a "mixed petition" containing both exhausted

¹ The cited page numbers refer to those generated by the Court's electronic filing system ("ECF"). Petitioner attached to his federal habeas petition a copy of the January 17, 2017 order from which he now seeks reconsideration. Dkt. No. 1-1 at 6.

and unexhausted claims, it may dismiss the petition without prejudice or retain jurisdiction over the petition and stay further proceedings pending exhaustion of state remedies. Rhines v. Weber, 544 U.S. 269, 275-76 (2005). This "stay and abeyance" procedure should be "available only in limited circumstances" where the petitioner can show (1) "good cause" for failing to "exhaust his claims first in state court" and (2) that his unexhausted claims are not "plainly meritless." Id. at 275, 277. Petitioner failed to allege or establish any basis for this Court to find good cause for his failure to seek reconsideration of the January 17, 2017 state court decision prior to filing his federal habeas petition. See Dkt. No. 5; Rhines, 544 U.S. at 275, 277. He has not made the required showing to warrant a stay, and his motion is therefore denied.

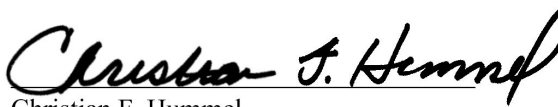
WHEREFORE, it is

ORDERED that petitioner's letter motion to stay this action, Dkt. No. 5, is **DENIED**; and it is further

ORDERED that the Clerk serve copies of this Decision and Order upon the parties in accordance with the Local Rules.

IT IS SO ORDERED.

Dated: March 8, 2017
Albany, New York


Christian F. Hummel
U.S. Magistrate Judge